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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,164	11/17/2003	Richard Watson	VAC.785A.US	4106
66/402 7590 11/06/2009 KINETIC CONCEPTS, INC. C/O SONNENSCHN NATH & ROSENTHAL LLP P.O. BOX 061080 WACKER DRIVE STATION, WILLIS TOWER CHICAGO, IL 60606				
EXAMINER SU, SUSAN SHAN				
ART UNIT		PAPER NUMBER		
3761				
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11/06/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/715,164

Applicant(s)

WATSON, RICHARD

Examiner

SUSAN SU

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-23, 25-41 and 45-58 is/are pending in the application.
- 4a) Of the above claim(s) 21-23, 25-28, 37-41 and 45-50 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 39-41 and 51-58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 21 January 2009 and 4 March 2009.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Claims 21-23, 25-28, 37-41, and 45-50 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected groups I, III, and IV, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on June 30, 2009.

The traversal is on the ground(s) that all groups share sufficient similarities that searching both groups would not bring about a "serious burden" on the Examiner because all groups have been examined previously by another examiner. This is not found persuasive because of the reasons set forth in the Election/Restriction requirement, Office Action mail date June 4, 2009 wherein the different status and different classification of group of inventions have been identified. Furthermore, the consideration of undue burden is one that must be made by the Examiner, Applicant's arguments that the search of one invention must necessarily result in a search of the other one has been considered, but is not persuasive insofar as the searches are not co-extensive and additional search would necessarily be required for the combination of inventions.

The requirement is still deemed proper and is therefore made FINAL.

Status of Claims

Claims 21-23, 25-41, and 45-58 are pending of which claims 21-23, 25-28, 37-41, and 45-50 are withdrawn for being directed at nonelected inventions. Claims 51-58 are new. No new matter is added.

Response to Arguments

2. Applicant's arguments with respect to all pending claims, which are substantially drawn to the amended claim language, have been considered but are moot in view of the new ground(s) of rejection necessitated by amendments to the claims.
3. The double patenting rejections presented in the Final Office Action mailed October 20, 2008 are overcome by amendments to the claims (i.e. "wherein the perforations are formed laterally through the gas flow channel").

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 29-35, 51-55, 57, and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Risk, Jr. et al. (US 6,755,807, "Risk") in view of Aldecoa et al. (US 4,996,128, "Aldecoa"), Hunt et al. (US 6,142,982, "Hunt"), and Randolph (US 6,767,334).

With regard to Claim 29, Risk teaches a personally portable vacuum desiccator (2) for collecting and storing liquid exudate comprising:

- a chamber (404, see Fig. 6) having a trapping agent (29);
- a vacuum pump (110) in fluid communication with said chamber;
- a motor (138) operably connected to said vacuum pump;
- a battery (Col. 4 lines 45-49); and
- a tube (20) having a first end in fluid communication with said chamber.

Risk does not teach a perforated gas flow channel or that the battery has a planar low profile.

Aldecoa teaches a planar low profile batter (20) used in a portable electronic device.

Hunt teaches an air flow channel (10) connected to the chamber of a portable wound drainage device for venting the chamber.

Randolph teaches a perforated gas flow channel (18) that allows air to reach the wound dressing (Col. 3 lines 5-14) and thus venting the wound, wherein the perforations (19) are formed laterally through the gas flow channel. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Risk with Aldecoa, Hunt, and Randolph for the purpose of reducing the size of the portable unit (by using a

low profile battery) and for utilizing a known configuration in allowing better venting of moisture and pressure from the chamber.

With regard to Claim 30, Risk also teaches that the trapping agent is selected from the group consisting of desiccants, adsorbents, and absorbents ("liquid solidifier" functions by absorbing liquid).

With regard to Claim 31, Risk also teaches that the tube (20) comprises a single passage flow path (see Fig. 6).

With regard to Claim 32, Risk also teaches that the trapping agent is disposed within a cartridge (the chamber itself is the interior space of a cartridge 26) that is removable (see Fig. 7) from the personally portable vacuum desiccator.

With regard to Claim 33, Risk also teaches a control circuit (depicted by Fig. 2) in electrical communication with said motor (138, through controller 50) for controlling the operation of said motor.

With regard to Claim 34, Risk, Aldecoa, and Randolph do not teach a sensor selected from the group as claimed. Hunt teaches a pressure sensor (105) connected with the circuitry of the portable wound drainage device. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Risk, Aldecoa, and Randolph with the sensor of Hunt for the purpose of having a means to detect the fluid level within the chamber.

With regard to Claim 35, Risk also teaches that the control circuit comprises an input/output unit (10).

With regard to Claim 51, Risk also teaches that the vacuum desiccator is transportable upon the body of a person (handle portion 12 allows for transport upon the body/hand of a person).

With regard to Claim 52, Risk also teaches that the vacuum pump (110) is operable to draw liquid exudate from a wound through said tube (20) and into said chamber (as suggested in Figs. 1 & 5).

With regard to Claim 53, Risk also teaches that the trapping agent includes a capacity for trapping a volume of liquid exudate (the trapping agent "solidifies" liquid and therefore naturally traps a volume of liquid).

With regard to Claim 54, Risk also teaches that the tube transfers liquid exudate from a wound to the chamber (see Figs. 1 & 5).

With regard to Claim 55, Risk also teaches that a second end of the tube is in fluid communication with a wound during healing of the wound (see Fig. 1).

With regard to Claim 57, Risk does not teach that the trapping agent includes at least one of an elastic mesh material, a knitted fabric mesh, and a gauze. However, as disclosed in the background of Risk, gauze is commonly used in soaking up wound exudates (Col. 1 lines 26-31), which serves the same function as the trapping agent for absorbing wound exudates. It would have been obvious to one of ordinary skill in the art at the time of the invention to use a gauze as the trapping agent inside the chamber for the purpose of utilizing an economic yet effective material for limiting splashing of liquid exudates within the chamber.

With regard to Claim 58, Risk also teaches that the chamber further comprises:

a unidirectional inlet port (with check-valve 400) to the chamber; and
an outlet port (412) from the chamber.

7. Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Risk, Aldecoa, Hunt, and Randolph as applied to Claim 32 above, and further in view of Fell (US 5,073,172). Risk, Aldecoa, Hunt, and Randolph do not teach that the cartridge is transparent. Fell teaches a transparent bottle (21) for holding wound exudates. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the cartridge of Risk with the transparent material of Fell for the purpose of allowing the user to see the liquid level within the cartridge.

8. Claim 56 is rejected under 35 U.S.C. 103(a) as being unpatentable over Risk, Aldecoa, Hunt, and Randolph as applied to Claim 34 above, and further in view of Gysling et al. (US 6,536,291, "Gysling"). Risk, Aldecoa, Hunt, and Randolph do not teach that the pressure sensors comprise at least one of a surface strain gauge and an optical displacement gauge. Gysling teaches using an optical strain gauge for measuring pressures in a flow system (Col. 9 lines 49-54). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Risk, Aldecoa, Hunt, and Randolph with an optical strain sensor for its sensitivity.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SUSAN SU whose telephone number is (571)270-3848. The examiner can normally be reached on M-F 9:00AM-5:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Susan Su/
Examiner, Art Unit 3761
/Tatyana Zalukaeva/
Supervisory Patent Examiner, Art Unit 3761